



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. Bert Ford, Administrator
Texas Liquor Control Board
Austin, Texas

Dear Sir:

Opinion No. C-1399

Re: State not entitled to collect a tax on beer consumed on the premises of a manufacturer or upon beer which has been dumped on such premises.

This will acknowledge receipt of your letter of September 7, 1939, wherein you submit for an opinion of this department the following questions:

"1. Is the State of Texas entitled to collect a tax on beer consumed on the premises of a manufacturer?

"2. Is the State of Texas entitled to collect a tax on beer which has been dumped, on the premises of a manufacturer?"

Your inquiries necessarily infer that the manufacturers in question are Texas manufacturers.

Section (d) of Article 667-23, Penal Code of Texas, 1925, reads:

"On beer manufactured in this State the duty of paying the tax and affixing and cancelling the stamp as required herein shall rest primarily upon the manufacturer, and it is hereby declared to be unlawful for any manufacturer to transport any beer or to deliver to any person any beer to be transported away from the brewery of said manufacturer unless and until tax has first been paid and the tax stamp evidencing such payment has been first affixed and cancelled as required by this Act; provided, however, that no person holding a Manufacturer's License in this State shall be required to affix stamps on any

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containers of beer stored in the brewery where same is brewed or being transported therefrom to a point outside of this State."

It will be noted that it is "unlawful for any manufacturer to transport any beer or to deliver to any person any beer to be transported away from the brewery of said manufacturer unless and until tax has first been paid...." (underscoring ours). We note no prohibition in this or elsewhere in the law against a manufacturer giving away beer to be consumed upon the premises.

Section (a) of Article 667-23, Penal Code of Texas, 1925, reads:

"There is hereby levied and assessed a tax at the rate of One Dollar and Twenty-four cents (\$1.24) per barrel on all beer sold, stored, distributed, transported, or held for the purpose of sale in this State whether manufactured in or imported into this State. Said tax shall be paid and evidenced by placing stamps, which the State Treasurer is herein authorized to provide in the denominations required, on each original package as defined in this Article; provided, further, that at the time said stamp is affixed the person affixing the stamp shall with indelible ink or stamp cancel the same by placing the date and the licensee's full name or initials upon said revenue stamp."

It is manifest that the legislature intended that the tax provided for was to be levied upon beer sold, and upon beer stored, distributed, or held for the ultimate purpose of sale within the State. Nowhere in the act do we find any intention on the part of the legislature to levy and collect a tax upon beer which is not sold or which is not distributed, transported, or held for the ultimate purpose of sale. If beer is given away and consumed upon the premises of the manufacturer or is dumped, so as to render such beer incapable of reaching the channels of commerce no tax is due thereon.

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We therefore answer both your questions
in the negative.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Lloyd Armstrong*
Lloyd Armstrong
Assistant

LA:AF

APPROVED SEP 27, 1939

Gertrude Mann
ATTORNEY GENERAL OF TEXAS

